Supreme Court, U. S.
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No. 80-629

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MAREN ENGINEERING CORP.,

Appellant,

vs.

KONSTANTINOS VELMOHOS,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

APPELLEE'S MOTION TO AFFIRM AND SUPPORTING BRIEF

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MOTION TO AFFIRM

The Appellee, Konstantinos Velmohos, hereby moves that the decision of the Supreme Court of New Jersey in this matter be affirmed on the grounds that the law involved is well settled and was properly applied. No unique or substantial questions are presented by this case which require oral argument on the merits.

PARTIES TO THE PROCEEDING

1. Konstantinos Velmohos, Plaintiff-Appellee

2. Maren Engineering Corp., Defendant-Appellant

3. Nadustco, Inc. (not a party to appeal; summary judgment granted below on grounds of expiration of statute of limitations)

4. Air Conveying, Inc., Defendant below

TABLE OF CONTENTS

Motion to Affirm i

Parties to the Proceeding ii

Constitutional Provisions, Statutes and Rules Involved . 1

Statement of the Case 5

Conclusion 12

CASES CITED:

Allenberg Cotton Co., Inc. v. Pittman,
419 U.S. 20 (1974) 10

Bauserman v. Blunt,
147 U.S. 647 (1893) 11

Cohn v. G.D. Searle & Co.,
447 F. Supp. 903 (D.N.J. 1978), revd.
– F.2d –, (Docket No. 79-2406, and
79-2605, 3rd Cir. July 23, 1980) 5, 11

Dahnke-Walker Milling Co. v. Bondurant,
257 U.S. 282 (1921) 10

Hopkins v. Kelsey Hayes, Inc.,
463 F. Supp. 539 (D.N.J. 1979), affirmed
– F.2d – (Docket No. 79-1881) 5, 11

Lochner v. New York,
198 U.S. 45 (1905) 8

McGowan v. Maryland,
366 U.S. 420, 426 (1961) 7

Reed v. Reed,
404 U.S. 71 (1971) 8, 10

Richardson v. Belcher,
404 U.S. 78 (1971) 8

Royster Guano Company v. Virginia,
253 U.S. 412 (1920) 8

TABLE OF CONTENTS

CASES CITED:

Union Brokerage Co. v. Jensen,
322 U.S. 202 (1944) 10, 11

Velmohos v. Maren Engineering Corp.,
83 N.J. 282, 416 A.2d 372 (1980) 9

UNITED STATES CONSTITUTION CITED:

Article 1. Section 8, Clause 3 2

Fourteenth Amendment 1, 5, 7, 8, 10

STATUTES CITED:

N.J.S.A. 2A:14-2 3

N.J.S. 2A:14-22 ..... 2, 5, 6, 7, 8, 9, 10

RULES CITED:

N.J.R. 1:13-7 ..... 4, 8

N.J.R. 4:4-4(c)(1) 3, 5, 7, 8

APPENDIX

Appendix A—Opinion of the Supreme Court of New Jersey 1a

Appendix B—Opinion of the Superior Court of New Jersey, Appellate Division 22a

Appendix C—Opinion of the United States Court of Appeals for the Third Circuit 31a

Appendix D—Affidavit of David R. Brown, President of Maren Engineering Corp. 54a

IN THE

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CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Fourteenth Amendment to the United States Constitution: Section 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person

of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Constitution of the United States, Art. 1, § 8, Cl. 3 (the Commerce Clause):

"The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; . . ."

The New Jersey "Tolling Statute", *N.J.S.* 2A:14-22:

"If any person against whom there is any of the causes of action specified in sections 2A:14-1 to 2A:14-5 and 2A:14-8, or if any surety against whom there is a cause of action specified in any of the sections of article 2 of this chapter, is not a resident of this state when such cause of action accrues, or removes from this state after the accrual thereof and before the expiration of the times limited in said section, or if any corporation or corporate surety not organized under the laws of this state, against whom there is such a cause of action, is not represented in this state by any person or officer upon whom summons or other original process may be served, when such cause of action accrues or at any time before the expiration of the times so limited, the time or times during which such person or surety is not residing within this state or such corporation or corporate surety is not so represented within this state shall not be computed as part of the periods of time within which such an action is required to be commenced by the section. The person entitled to any such action may commence the same after the accrual of the cause therefor, within the period of time limited therefor by said section,

exclusive of such time or times of nonresidence or nonrepresentation."

New Jersey's "Long-Arm" Rule, *N.J.R.* 4:4-4:

"Service of summons, writs and complaints shall be made as follows:

• • •

(c) Corporations, Partnerships, and Associations.
(1) Corporations. Upon a domestic or foreign corporation, by serving, in the manner prescribed in paragraph (a), either an officer, director, trustee, or managing or general agent; or any person authorized by appointment or by law to receive service of process on behalf of the corporation; or the person at the registered office of the corporation in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon the person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then upon any servant of the corporation within this State acting in the discharge of his duties. If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry and effort personal service cannot be made upon any of the foregoing and if the corporation is a foreign corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office."

New Jersey's Statute of Limitations for Personal Injury Actions, *N.J.S.A.* 2A:14-2:

"Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this state shall be commenced within 2 years next after the cause of any such action shall have accrued."

New Jersey Court Rule N.J.R. 1:13-7 for the Dismissal of Inactive Civil Cases reads:

"Except in receivership and liquidation proceedings and except as otherwise provided by rule or court order, whenever any civil action shall have been pending in any court for 6 months without any required proceeding having been taken therein, the clerk of the court, or in the Superior Court, the county clerk of the county in which the venue is laid, shall give to the parties or their attorneys written notice of a motion by the court to dismiss the same for want of prosecution. The notice shall advise that unless an affidavit is filed with the court at least 5 days prior to the return date explaining the delay and why the action should not be dismissed, the action will be dismissed without call. For purposes of this rule, adjournments, extensions of time, and applications, motions or hearings in connection therewith, shall not be considered a proceeding taken. Unless otherwise ordered by the court, a dismissal under this rule shall be without prejudice."

STATEMENT OF THE CASE

On August 3, 1973, the plaintiff, Konstantinos Velmohos, while in the course of his employment was injured. The injury occurred in a baling machine. This machine was designed by the defendant, Air Conveying, Inc., and was manufactured by Maren Engineering Corp.

As a result of this accident, Konstantinos Velmohos instituted suit in the Superior Court of New Jersey on June 4, 1976. This was approximately two years and ten months after the accident.

The Statute of Limitations in New Jersey applicable to this type of action is two years. This limitation period is tolled under *N.J.S.* 2A:14-22 in actions in which the defendant is a foreign corporation unrepresented for the service of process in New Jersey. It is undisputed that both Maren Engineering Corp. and Air Conveying, Inc. are unrepresented within the meaning of the statute. It is also undisputed that both defendant corporations had sufficient contacts with New Jersey to allow service under New Jersey's "Long-Arm" Rule (*N.J.R.* 4:4-4(c)(1)).

Defendants, Maren Engineering Corp. and Air Conveying, Inc., filed motions for summary judgment contending that the tolling statute *N.J.S.* 2A:14-22 was unconstitutional as being violative of the Fourteenth Amendment's guarantee of equal protection of the laws. This contention was ultimately rejected by the New Jersey Supreme Court and the United States Court of Appeals for the Third Circuit in the cases of *Hopkins v. Kelsey Hayes, Inc.*, 463 F. Supp. 539 (D.N.J. 1979), affirmed — F.2d — Docket No. 79-1881 and *Cohn v. G.D. Searle & Co.*, 447 F. Supp. 903 (D.N.J. 1978), *revd.* — F.2d —, Docket No. 79-2406 and 79-2605, 3rd Cir. July 23, 1980.

The appellant raises a commerce clause issue for the first time before this Court. The Appellee contends that

neither this commerce clause issue nor the equal protection issue raised below involve substantial or unique questions of law. The law is well settled in favor of the validity of the New Jersey Tolling Statute *N.J.S.* 2A:14-22.

This appeal raises no substantial or unique questions of law and the opinion of the New Jersey Supreme Court should be summarily affirmed.

The New Jersey "Tolling Statute" *N.J.S.* 2A:14-22 reads:

> "If any person against whom there is any of the causes of action specified in sections 2A:14-1 to 2A:14-5 and 2A:14-8, or if any surety against whom there is a cause of action specified in any of the sections of article 2 of this chapter, is not a resident of this state when such cause of action accrues, or removes from this state after the accrual thereof and before the expiration of the times limited in said section, or if any corporation or corporate surety not organized under the laws of this state, against whom there is such a cause of action, is not represented in this state by any person or officer upon whom summons or other original process may be served, when such cause of action accrues or at any time before the expiration of the times so limited, the time or times during which such person or surety is not residing within this state or such corporation or corporate surety is not so represented within this state shall not be computed as part of the periods of time within which such an action is required to be commenced by the section. The person entitled to any such action may commence the same after the accrual of the cause therefor, within the period of time limited therefor by said section, exclusive of such time or times of nonresidence of nonrepresentation."

It is Maren's contention that because they were subject to long arm service, the "Tolling Statute" is unconstitutionally violative of their right to equal protection of the laws as guaranteed by the Fourteenth Amendment. Maren contends that due to its amenability to service under the long arm rule (*N.J.R.* 4:4-4(c)(1)) the statutory classification of foreign corporations not represented for service of process in New Jersey is irrational.

This contention cannot survive close scrutiny. This Court has held that, "A statutory discrimination will not be set aside if any statement of facts reasonably may be conceived to justify it." *McGowan v. Maryland,* 366 U.S. 420, 426 (1961). There is clearly a rational basis for the Tolling Statute, *N.J.S.* 2A:14-22. If a corporation cannot be served within the boundaries of New Jersey, additional burdens are placed upon the plaintiff. The only means of service available to the plaintiff is long arm service. This requires additional inquiry on the part of the plaintiff as pointed out by the New Jersey Supreme Court in the opinion below when it states:

> "The flaw in defendants' argument is that it recognizes as rational only a distinction based on the impossibility of obtaining jurisdiction over a foreign corporation. It refuses to acknowledge that among amenable foreign corporations there are degrees of difficulty in effecting service. A recognition of these degrees of difficulty supplies a present rational basis for distinguishing between represented corporations and those unrepresented but amenable to long-arm service." *Velmohos v. Maren Engineering Corp.,* 416 A.2d 372, 380 (1980).

The appellant has made much of the fact that under New Jersey law, the filing of a complaint in which the

defendant is identified as "John Doe will toll the running of the statute against any party later substituted for "John Doe." While this affords some protection to plaintiffs, it does not render the Tolling Statute irrational or arbitrary. Court *Rule* 1:13-7 provides for the dismissal of inactive civil cases after six months. The fact that such a dismissal is without prejudice is of no aid to a plaintiff as the statute of limitations would be running unless tolled by the tolling statute, *N.J.S.* 2A:14-22. While it is true that a court will usually grant a plaintiff diligently pursuing a claim additional time to find and serve a defendant, this is discretionary with the court. The plaintiff cannot rely on indefinite extensions. But for the Tolling Statute, plaintiffs cause of action could be unfairly barred.

The cases cited by the appellant in its Jurisdictional Statement to support its contention that the tolling statute is violative of equal protection are simply inapplicable to the facts of this case. These cases (*Reed v. Reed*, 404 U.S. 71 (1971), *Royster Guano Company v. Virginia*, 253 U.S. 412 (1920), *Richardson v. Belcher*, 404 U.S. 78 (1971), and *Lochner v. New York*, 198 U.S. 45 (1905)) merely state the proposition that statutory classification must be rational to survive scrutiny under the equal protection clause of the Fourteenth Amendment. This basic constitutional premise has never been disputed. There is nothing in the language of any of these cases which suggests that the statutory scheme encompassed in the New Jersey Tolling Statute is any way irrational or arbitrary. *Reed v. Reed*, 404 U.S. 71 (1971), cited by the appellant, is totally inapplicable to the case at bar. *Reed* struck down a classification based on sex which created an irrebuttable presumption in favor of males over females. This presumption bore no rational relationship to the purpose of the statute. The New Jersey Tolling Statute creates no

presumptions which are irrational. The Tolling Statute's sole purpose is to insure that plaintiffs are not unfairly prevented from pursuing claims against absent defendants. This is a legitimate state interest and the mechanism of the tolling statute is a proper, permissible and rational means of pursuing that interest.

Appellant contends that it is similarly situated to defendant, Nadustco (Jurisdictional Statement, Page 10). This is clearly inaccurate. Nadustco, as a registered foreign corporation, had an agent for service in New Jersey and was thus completely available to the plaintiff at all times. During this period, Maren had no one within the state and the plaintiff had no certain way to ascertain its whereabouts for service. In essence, Maren is arguing that because the plaintiff finally located Maren, therefore the plaintiff always knew where Maren was. That this is patent nonsense is really apparent.

Appellant contends "that *N.J.S.* 2A:14-22 as construed by the courts below, conclusively presumes that foreign corporations without New Jersey registered agents are not amenable to service." (Jurisdictional Statement, Pages 11 and 12). The statute in fact makes no such presumption. The statute merely seeks to prevent diligent plaintiffs from being unfairly prejudiced by an inability to locate and serve an unrepresented defendant within the statute of limitations period. In fact, the New Jersey Supreme Court expressly stated in its opinion on this case that if the plaintiff's delay were inexcusable and the defendant prejudiced thereby, the defendant can assert the defense of laches. *Velmohos v. Maren Engineering*, 83 N.J. 282, 416 A.2d 372 at 378 footnote 10. In fact, despite Maren's protestations to the contrary, no irrebuttable presumption is created.

Maren would paint the picture of a helpless corporation beseiged by packs of wolf-like plaintiffs, who shielded

by the Tolling Statute, are intent upon attacking with stale claims intentionally hoarded until Maren could no longer fairly defend against them. This portrait is as ludicrous as it is inaccurate. It would be a foolish plaintiff indeed that would intentionally delay the commencement of an action, in reliance on *N.J.S.* 2A:14-22. The statute of limitations would start running as soon as the defendant became represented within New Jersey within the terms of the tolling statute. No notice to the plaintiff is required and any plaintiff so delaying would do so at his peril.

The Tolling Statute is not violative of the commerce clause of the United States Constitution. The statute does not fall within the prohibitions of any of the cases cited by appellant. The tolling statute does not affect Maren's right to appear in the courts of New Jersey nor does it affect Maren's right to do business in New Jersey or to engage in interstate commerce. Maren contends that the tolling statute in effect requires registration. This simply is not so. The statute merely protects plaintiffs from defendants not readily available for the service of process. It should be noted that the statute in question, *N.J.S.* 2A:14-22 does not require formal registration. It merely requires the representation of the corporation within the State of New Jersey by "any person or officer upon whom summons or other original process may be served . . ." (*N.J.S.* 2A:14-22).

Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282 (1921) is inapplicable. As pointed out by this court in *Allenberg Cotton Co., Inc. v. Pittman*, 419 U.S. 20 (1974), where there is a localization of business requiring a wide variety of contacts with people in the community, greater latitude will be given to state regulations of corporations. *Allenberg Cotton Co., Inc., supra* at 32 citing *Union Brokerage Co. v. Jensen*, 322 U.S. 202 (1944). As Maren ad-

mits in its own affidavits, while it is engaged in interstate commerce, its activities in New Jersey are extensive and localized within the meaning of *Union Brokerage, supra* (Appendix, Page 59a). Clearly, the tolling statute is one of the least restrictive and burdensome ways of protecting New Jersey plaintiffs injured by Maren's local activities.

It is clear from the foregoing that Maren's appeal raises no substantial or unique questions of law which would require further arguments in this matter. As pointed out by the Court of Appeals in its opinion in *Hopkins v. Kelsey Hayes, Inc.* and *Cohn v. G.D. Searle & Co.*, 447 F. Supp. 903 (D.N.J. 1978), *revd.* – F.2d –, (Docket No. 79-2406, and 79-2605, 3rd Cir. July 23, 1980) at footnote 15, this Court has implicitly found constitutional a Tolling Statute with more burdensome requirements than New Jersey's. *Bauserman v. Blunt*, 147 U.S. 647 (1893).

CONCLUSION

For the foregoing reasons, it is respectfully urged that this Court summarily affirm the decision of the New Jersey Supreme Court.

Respectfully submitted,

/s/ Francis J. Lutz
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APPENDIX A

SUPREME COURT OF NEW JERSEY

A-72/143 September Term 1979

KONSTANTINOS VELMOHOS, also known as VELMOHOS KONSTANTINOS,

Plaintiff-Respondent,

vs.

MAREN ENGINEERING CORPORATION, an Illinois corporation, and AIR CONVEYING, INC., an Illinois corporation,

Defendants-Appellants,

and

NADUSTCO, INC., a Louisiana corporation,

Defendant.

Opinion of the Supreme Court of New Jersey

Argued March 17, 1980—Decided June 18, 1980.

On appeal from the Superior Court, Appellate Division, whose opinion is reported at 168 N.J. Super. 520 (1979).

WILLIAM K. LEWIS argued the cause for appellant Maren Engineering Corporation (SHANLEY & FISHER, attorneys; MR. LEWIS and MOLLY B. CANNON, on the briefs.).

JOSEPH DIRIENZO argued the cause for appellant Air Conveying, Inc.

BARRY A. WEISBERG argued the cause for respondent (EDWARD J. DOLAN, attorney).

The opinion of the Court was delivered by PASHMAN, J.

This case raises the question whether the tolling provision of New Jersey's statutes of limitations, N.J.S.A. 2A:14-22, is unconstitutional as applied to foreign corporations that are not represented within the State but are amenable to long-arm service. Invalidation of the statute would render defendant corporations immune from suit in this State, since without the benefit of the tolling statute, the relevant limitations period has expired. We find the statute constitutional and accordingly uphold plaintiff's action as timely.

I

The facts are essentially undisputed. On June 4, 1976, plaintiff filed a complaint in the Superior Court, Law Division, seeking damages for personal injuries sustained by him on August 3, 1973,[1] as a result of an allegedly defective shredder-baler machine manufactured by Maren Engineering Corporation (Maren), an Illinois corporation.[2] The complaint was later amended to include claims against Air Conveying Corporation (Air Conveying), the designer of the machine, also an Illinois corporation.[3]

---

1. Plaintiff's foot was caught in a conveyor which then drew his entire body into a machine. The accident occurred in the course of plaintiff's employment by Container Corporation of America in New Brunswick, New Jersey. Plaintiff successfully pursued a Worker's Compensation claim against his employer. He was found to have a 5% total permanent neurological disability and a 28⅓% total permanent orthopedic disability.

2. The complaint also named as a defendant George Swan, individually and trading as Swan Engineering Company, a New Jersey entity. By stipulation the complaint was dismissed as to Swan with prejudice on February 3, 1977.

3. The amended complaint also added claims against Nadustco, Inc., a Delaware corporation with its principal office in New Or-

Both Maren and Air Conveying raised as a defense plaintiff's failure to file suit within the applicable two-year limitations period for personal injury actions. N.J.S.A. 2A:14-2. Plaintiff asserted that because neither defendant maintained registered offices or agents for services of process in New Jersey, N.J.S.A. 2A:14-22 tolled the statute of limitations and plaintiff's claim was timely.

On motions for summary judgment defendants claimed that New Jersey's tolling statute employed an unconstitutional classification in distinguishing between foreign corporations represented in New Jersey and foreign corporations which were unrepresented but amenable to long-arm service. In support of this contention, they cited *Cohn v. G. D. Searle & Co.*, 447 F. Supp. 903 (D.N.J. 1978). In that case the federal district court found that the differing treatment lacked any rational basis. It therefore held New Jersey's tolling statute unconstitutional as applied to unrepresented foreign corporate defendants amenable to long-arm service.

The trial court adopted the reasoning of the *Cohn* decision. After requiring the defendants to demonstrate their amenability to long-arm service during the period in question,[4] the court granted their motions for dismissal. Plaintiff appealed to the Appellate Division.

---

leans, Louisiana. However, Nadustco maintained an agent for service of process in New Jersey and was therefore not subject to the tolling statute. It sought dismissal from the action on the grounds that the statute of limitations barred suit. Plaintiff did not oppose the motion, and the trial judge granted Nadustco summary judgment on August 22, 1977.

4. To that end, Maren had submitted an affidavit of its president outlining the corporation's business in New Jersey between 1969 and 1975. Similarly, Air Conveying presented an affidavit of its president listing sales negotiated and completed in New Jersey between 1969 and 1978. In view of our disposition of this matter, we need not review the trial court's determination of this preliminary issue.

Finding no basis for distinguishing the decision in *Lemke v. Bailey*, 41 N.J. 295 (1963), the Appellate Division considered itself bound by this Court's view on the tolling statute and held N.J.S.A. 2A:14-22 constitutional, reversing the trial court. 168 N.J. Super. 520 (App. Div. 1979). The court also observed that it was "not satisfied as to the correctness of the conclusion reached in *Cohn*" and noted that a later decision by a federal district court, *Hopkins v. Kelsey-Hayes, Inc.*, 463 F. Supp. 539 (D.N.J. 1978),[5] had reached the opposite conclusion on the same issue and had held the statute constitutional. 168 N.J. Super. at 526.

Defendants filed notices of appeal as of right;[6] Maren also petitioned this Court for certification, which was granted and merged with the appeals. 82 N.J. 288 (1980). We now affirm.

The effect of N.J.S.A. 2A:14-22 on corporate defendants was left unresolved by the Court in *Lemke v. Bailey*, *supra*. It has been the subject of lower court decisions with conflicting results. Compare *Cohn v. G.D. Searle & Co.*, *supra*, with *Hopkins v. Kelsey-Hayes, Inc.*, *supra*; *Whalen v. Young*, 28 N.J. Super. 543 (Law Div. 1953), rev'd on other grounds, 15 N.J. 321 (1954) (tolling provision applicable to unrepresented corporate defendant in motor vehicle cases despite availability of substituted service under N.J.S.A. 39:7-2), with *Ferraro v. Ferro Trucking Co., Inc.*, 72 N.J. Super. 519 (Law Div. 1962) (same circumstances—tolling provisions inapplicable). A resolution of this conflict first requires analysis of the statute's application to unrepresented foreign corporations that are

5. *Cohn* was decided on March 22, 1978. The trial court's orders dismissing plaintiff's complaint against Maren and Air Conveying were entered on June 20 and July 25, 1978, respectively. The *Hopkins* case was decided on December 18, 1978.

6. Motions for leave to appeal were also filed but were dismissed since the appealed judgment was final.

amenable to long-arm service of process. Finding the provision applicable, we next consider the constitutionality of the statute as applied.

A

The New Jersey tolling statute, N.J.S.A. 2A:14-22, provides:

> If any person against whom there is any of the causes of action specified in sections 2A:14-1 to 2A:14-5 and 2A:14-8, or if any surety against whom there is a cause of action specified in any of the sections of article 2 of this chapter, is not a resident of this state when such a cause of action accrues, or removes from this state after the accrual thereof and before the expiration of the times limited in said sections, *or if any corporation or corporate surety not organized under the laws of this state, against whom there is such a cause of action, is not represented in this state by any person or officer upon whom summons or other process may be served, when such cause of action accrues or at any time before the expiration of the times so limited, the time or times during which* such person or surety is not residing within this state or *such corporation or corporate surety is not so represented within this state shall not be computed as part of the periods of time which such an action is required to be commenced by the section.* The person entitled to any such action may commence the same after the accrual of the cause therefor, within the period of time limited therefor by said section, exclusive of such time or times of nonresidence or nonrepresentation. [Emphasis supplied]

It is undisputed that neither Maren nor Air Conveying maintained an agent for service of process in New Jersey. A literal reading of the tolling statute's terms would un-

avoidably lead to the conclusion that the statutory period of limitations never commenced to run on plaintiff's claims. Defendants contend, however, that in light of the expansion of long-arm jurisdiction by state courts over nonresidents, we should construe the statute to provide that the period of limitations is tolled only when a foreign corporation cannot be served anywhere with process from a New Jersey court.

According to defendants the purpose of N.J.S.A. 2A:14-22 is to protect plaintiffs who might otherwise be barred from bringing their actions when certain classes of defendants are involved—essentially defendants who are not subject to the jurisdiction of New Jersey courts. They point to the amendment of the statute in 1949, L. 1949, c. 125, which excluded represented foreign corporations from its tolling effect. This amendment was enacted shortly after a statutory revision that provided acquisition of personal jurisdiction over foreign corporations by personal service within the State on an "officer, director, trustee or a managing or general agent of the corporation * * *." L. 1948, c. 356. Defendants contend that the legislative intent of the two provisions was to compel plaintiffs to institute their actions within the relevant limitations period provided they could obtain jurisdiction over and serve process on defendants. Since under present day law defendants were amenable to "long-arm" service of process notwithstanding the absence of a representative in New Jersey, see R. 4:4-4(c)(1), defendants claim they are exempt from the tolling provision.

Under the defendants' approach the statutory phrase in N.J.S.A. 2A:14-22—"not represented in this state by any person or officer upon whom summons or other original process may be served"—would be interpreted as though it simply said, "not amenable to service." Thus, a standard involving representation would be transformed into one

involving amenability to service. Because neither legislative history nor subsequent development support this result, we reject defendant's argument and conclude that unrepresented, foreign corporations subject to long-arm service are not exempt from N.J.S.A. 2A:14-22.

Claims similar to defendants' were raised and rejected in *Lemke v. Bailey, supra.* In that case plaintiffs brought suit against nonresidents for damages alleged to have resulted from an automobile accident in New Jersey. 41 N.J. at 297. Defendants argued that since they were amenable to service at all times following the accident by service on the New Jersey Director of Motor Vehicles, the tolling statute did not apply to them. The Court held that such amenability to service did not affect the statute's provision for tolling during nonresidence. *Id.* at 303.

While accepting *Lemke* as correctly decided, defendants here argue that the Appellate Division erred in finding *Lemke* controlling on the separate statutory issue now before us. They correctly note that the *Lemke* Court expressly declined to pass on the effect of the tolling provision on corporate defendants. See *id.* at 301. *Lemke* was concerned only with the effect of N.J.S.A. 39:7-2 on the tolling statute's coverage of individual defendants who were absent from the State. That provision made nonresident motorists amenable to substituted service upon New Jersey's Director of Motor Vehicles. Defendants further emphasize that the legislative history of N.J.S.A. 2A:14-22 more directly supported the conclusion that the tolling provision remained applicable despite the availability of substituted service. The Legislature had considered and passed but later recalled a proposed amendment to the statute exempting nonresident motorists subject to substituted service. The Court in *Lemke* held that legislative inaction in the face of judicial constructions confirmed that N.J.S.A.

39:7-2 did not affect the scope of the tolling provision in N.J.S.A. 2A:14-22. See 41 N.J. at 301.

Defendants contend that none of these factors supports an extension of the rationale in *Lemke*. Noting the absence of any legislative activity concerning the tolling statute's application to corporations, defendants contend that the presence of contradictory judicial determinations involving foreign corporate defendants, see *supra* at —— (slip op. at 6), renders legislative silence ambiguous.

Despite these asserted bases for distinction, we find the approach taken in *Lemke* applies with equal force to the effects of long-arm jurisdiction on the scope of N.J.S.A. 2A:14-22. As noted by the Court in *Lemke*, the origins of N.J.S.A. 2A:14-22 are traceable to 1820. See 41 N.J. at 298. In its original version New Jersey's tolling provision made on specific reference to corporations. See Pennington, *Laws of New Jersey*, 1703-1820 at 670 (1821). The statute remained essentially unchanged until 1949, at which time it provided:

> If any person against whom there is or may be a cause of action specified in sections 2:24-1, 2:24-2, 2:24-3, 2:24-5, 2:24-6; 2:24-16 or 2:24-17 of this title is not a resident of this state when such cause of action accrues, or removes from this state after the accrual thereof and before the expiration of the times limited in said sections, the time or times during which such person is not residing within this state shall not be computed as a part of the periods of time within which such actions are required to be commenced by said sections; and the person entitled to any such action may commence the same after the accrual of the cause therefor, within the period of time limited therefor by said sections, exclusive of such time or times of nonresidence, [R.S. 2:24-7]

In 1949 the tolling statute was amended and for the first time dealt specifically with the corporate defendant. The amendment exempted from the statute domestic corporations and those foreign corporations maintaining representatives in New Jersey. It thereby extended the benefits of the State's statutes of limitations to those classes of defendants. As amended in 1949, the statute provided as follows:

> If any person against whom there is or may be a cause of action specified in sections 2:24-1, 2:24-2, 2:24-3, 2:24-5, 2:24-6, 2:24-16 or 2:24-17 of this Title is not a resident of this State when such a cause of action accrues, or removes from this State after the accrual thereof and before the expiration of the times limited in said sections, or if any corporation not organized under the laws of this State, against whom there is or may be such a cause of action, is not represented in this State by any person or officer upon whom summons or other original process may be served, when such cause of action accrues or at any time before the expiration of the times so limited, the time or times during which such person is not residing within this State or such corporation is not so represented within this State shall not be computed as part of the periods of time within which such actions are required to be commenced by said sections; and the person entitled to any such action may commence the same after the accrual of the cause therefor, within the periods of time limited therefor by said sections, exclusive of such time or times of nonresidence or nonrepresentation. [L. 1949, c. 125]

The statement accompanying the bill read as follows:

Foreign corporations licensed to do business in New Jersey are now deprived by judicial construction of the benefit of the statute of limitations. The purpose of this bill is to correct that situation. New York State found it necessary to make a similar change in its laws in view of recent court decisions.

[*Statement Accompanying Assembly No. 467* (1949)][7]

As noted above, defendants argue that the intent of the 1949 amendment was to exempt from the tolling provisions corporate defendants amenable to service of process. The fact that the words employed by the Legislature do not mirror this intention is not considered conclusive by defendants. They assert that the present reach of a State court's jurisdictional powers could not have been anticipated when the amendment was drafted. As evidence of this, they note that New Jersey's rule for long-arm service was not passed until 1958, R.R. 4:4-4(d) (effective September 3, 1958) (presently R. 4:4-4(c)(1), and that it was not until 1971 that this Court recognized that the long-arm rule allows out-of-state service to the "uttermost limits permitted by the United States Constitution," *Avdel Corp. v. Mecure*, 58 N.J. 264, 268 (1971).

7. At the time of this amendment, New York's tolling statute was Section 19 of the Civil Practice Act, which had been amended in 1943 to include an exception from the tolling statute for individuals or corporations with a designated agent for service of process within New York and for foreign corporations with "one or more officers or other persons in the state on whom a summons for such corporation may be served." (1943 N.Y. Laws, ch. 263. The current version of New York's tolling statute, N.Y. Civ. Prac. Law §207, specifically provides that it does not apply "while jurisdiction over the person of the defendant can be obtained without personal delivery of the summons to him within the state." 1962 N.Y. Laws, ch. 308, N.Y. Civ. Prac. Law §207(3) (McKinney 1972).

Defendant's position is unconvincing. It would require us to incorporate into the tolling statute changes in another area of the law which were made after its passage. While courts of other states have construed tolling statutes to be inapplicable to foreign corporations subject to long-arm service, the statutes involved were phrased in terms of "absence" from the state—general language which more readily lends itself to flexible interpretation.[8] See, *e.g., Dedmon v. Falls Products, Inc.*, 299 F.2d 173 (5th Cir. 1962) (Alabama law); *Partis v. Miller Equipment Co.*, 324 F.Supp. 898 (N.D. Ohio 1979), aff'd, 439 F.2d 262 (6th Cir. 1971); *Phillips v. Anchor Hocking Glass Corp.*, 413 P.2d 732 (Ariz. Sup. Ct. 1966); *Lipe v. Javelin Tire Co., Inc.*, 536 P.2d 291 (Idaho Sup. Ct. 1975).[9] The New Jersey statute, however, is very narrowly drawn. It speaks not of presence or absence but of *representation* within the State. Such language must be interpreted from the intent of the Legislature in light of circumstances at the time of enactment. 2A Sutherland, *Statutory Construction* §49.02 (4th Ed. 1973); see *Fidelity Deposit Co. of Maryland v. Abagnale*, 97 N.J. Super. 132, 143-144 Law Div. 1967). As defendants themselves recognize, the circumstances prevailing at the time of the 1949 amendment did not include long-arm service on foreign corporations. *We cannot accept the invitation to adopt this latter development as the premise for ignoring clear and unambiguous statutory language.*

8. For this reason, my Brother Sullivan's observation that our holding "places this Court with a minority of jurisdictions," *post* at — (slip op. at 2), is misleading. Our result today differs from those of other courts because of a difference in statutory language, not a defect in reasoning. Without describing and comparing the various tolling statutes that have been interpreted any reference to "majority" and "minority" rules is meaningless.

9. In some cases state legislative action has made clear that tolling shall not occur when a defendant is amenable to service outside the state. See, *e.g.*, Ill. Ann. Stat. ch. 83 §19 (Smith-Hurd 1979); N.Y. Civ. Prac. Law §207 (McKinney 1972).

Defendant Air Conveying argues in the alternative that New Jersey's long-arm rule created a new class of corporate defendants not covered by N.J.S.A. 2A:14-22. There is no merit to this contention. The tolling statute originally applied to all foreign corporations. See *Cramer v. Borden's Farm Products Co., Inc.*, 58 F.2d 1028 (S.D.N.Y. 1932) (under New Jersey law New York corporation licensed to do business in New Jersey not resident of New Jersey and therefore is within the scope of tolling statute). It was not until 1949 that any foreign corporations became exempt from its effects. See *Statement Accompanying Assembly No. 52* (1948). By design, therefore, the statute includes all corporations not specifically exempted by amendment. In effect, Air Conveying argues that a Rule of Court can act as an implied, partial repeal of a legislative enactment. This is beyond the power of the Judiciary. See *New Jersey Chamber of Commerce v. New Jersey Election Law Enforcement Commission*, 82 N.J. 57, — (1980).

It is significant to note that the 1949 amendment was enacted four years after the landmark case of *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). There the United States Supreme Court held that a state's jurisdictional powers extended beyond its borders to reach parties who have had "certain minimum contacts" with the state "such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice.'" *Id.* at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The Legislature must be presumed to have been aware of this development when it acted to remove only represented corporations from the tolling provisions of N.J.S.A. 2A:14-22. In the absence of legislative action expressly incorporating amenability to long-arm service as

an exemption from the tolling statute, that class of foreign corporations remains subject to its effect.[10]

This conclusion is in accord with the results we have reached in developing a "*common law of limitations.*" *Galligan v. Westfield Centre Service, Inc.*, 82 N.J. 188, 191 (1980). We have consistently endeavored, where in keeping with the underlying purposes of statutes of limitations, to preserve a plaintiff's opportunity to have his claim adjudicated on the merits. See, *e.g.*, *Galligan*, 82 N.J. at 193; *Kaczmarek v. New Jersey Turnpike Auth.*, 77 N.J. 329, 338 (1978); *White v. Violent Crimes Compensation Board*, 76 N.J. 368, 379 (1978). In this case defendant argues that denying plaintiff such an opportunity is consonant with the underlying purposes of the tolling statute. Not only do defendants misconstrue those purposes, but the approach they advocate is contrary to the "'just accommodation' of individual justice and public policy," *Galligan*, 82 N.J. at 192-193 (quoting *Lopez v. Swyer*, 62 N.J. 267, 274 (1973)), which seeks to avoid "obvious and unnecessary harm [to] individual plaintiffs." *Id.* at 192; see, *e.g.*, *Fox v. Passaic General Hosp.*, 71 N.J. 122, 125-

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10. We note that whatever hardship on foreign corporations might be caused by continued exposure to suit can be easily eliminated by the designation of an agent for service of process within the State. Contrary to defendants' and our Brother Sullivan's contentions, see *post* at — (slip op. at 1-2), the length of a defendant's exposure to suit without such an agent will not be determined solely by a plaintiff's convenience. If a plaintiff's delay is *inexcusable* and has resulted in *prejudice* to the defendant, the latter may raise the equitable defense of *laches* to bar the claim. See *West Jersey Title & Guaranty Co. v. Industrial Trust Co.*, 27 N.J. 144 (1958); *Pavlicka v. Pavlicka*, 84 N.J. Super. 357 (App. Div. 1964); *Pfeffer v. Delran Tp.*, 159 N.J. Super. 497 (Law Div. 1978). Since this appeal comes to us after a grant of summary judgment, we have no opportunity to assess the merits of that defense here.

126 (1976); *Kyle v. Green Acres at Verona, Inc.*, 44 N.J. 100, 109 (1965).[11]

B

Turning to defendants' constitutional claims, we find them similarly unpersuasive.[12]

Equal Protection

Defendants do not contend that the classification employed in N.J.S.A. 2A:14-22 implicates any fundamental interest or "suspect class." Rather they assert that a distinction between foreign corporations represented within the State and those unrepresented but amenable to long-arm service lacks any rational relation to the governmental objective sought to be advanced by the tolling statute. Their argument is that the continued expansion of extra-territorial jurisdiction has undermined the rationality of distinguishing between foreign corporations repre-

11. Our Brother Sullivan's reliance on *Galligan* and *White* is therefore misplaced. Neither case dealt with the tolling provision at issue here. In rejecting the "harsh approach of literally applying the statute of limitations," *Galligan*, 82 N.J. at 192 (quoting *Kyle*, 44 N.J. at 109), the Court in those cases avoided the infliction of unnecessary harm on plaintiffs. See *Galligan*, 82 N.J. at 192-193; *White*, 76 N.J. at 379. We do the same here by refusing to deny plaintiffs the benefit of a *tolling* statute to which they are clearly entitled. Justice Sullivan's approach would have us avoid rigid language for the purpose of barring plaintiff's assertion of his claim—a result directly contrary to that reached in *Galligan* and *White*, which the dissent has cited for its support. *Post* at — (slip op. at 3).

12. Defendants base their claims of unconstitutionality on the Fourteenth Amendment to the Federal Constitution. We note, however, that our analysis would be identical if the challenges had been based on State constitutional grounds. See *Taxpayer's Ass'n of Weymouth Tp.*, 80 N.J. 6, 42-44 (1976), app. dism. and *cert. den. sub nom. Feldman v. Weymouth Tp.*, 430 U.S. 977 (1977).

sented in New Jersey and unrepresented foreign corporations that are amenable to long-arm service outside the State. Defendants therefore challenge as irrational the tolling statute's application to the latter.

The Court in *Lemke* rejected a similar constitutional challenge to the statute's distinction between resident and non-resident motorists. See 41 N.J. at 302-303. Although the issue there decided is not identical to that now before us, the principles on which the Court relied continue to provide the proper framework for analysis.[13] They support a finding of constitutionality.

Legislative enactments are presumed to be valid and the burden on the proponent of invalidity is a heavy one. *E.g., Hutton Park Gardens v. West Orange Town Council*, 68 N.J. 543, 564-565 (1975). The challenger must demonstrate that the classification lacks a rational basis in relation to the object of the legislation. *E.g., Dome Realty, Inc. v. City of Paterson*, — N.J. —, — (1980) (slip op. at 43); *State v. CIB Int'l*, — N.J. —, — (1980) (slip op. at 15); *Salorio v. Glaser*, — N. J. —, — (1980) (slip op. at 40); *Taxpayers' Ass'n of Weymouth Tp. v. Weymouth Tp.*, 80 N.J. 6, 40 (1976), app. dism. and *cert.* den. *sub nom. Feldman v. Weymouth Tp.*, 430 U.S. 977 (1977). Even if the original, stated purpose of an enactment refers to conditions that no longer exist, a classification survives this minimal constitutional scrutiny as long as it possesses a

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13. Defendants again attempt to negate the precedential value of the *Lemke* case. They reiterate the distinctions discussed *supra* at — (slip op. at 10-11), and rely heavily on the fact that defendants in *Lemke* conceded there was a rational basis for establishing resident and nonresident classes. See 41 N.J. at 302. We agree with Appellate Division that such an admission is "hardly any basis for detracting from the court's decision that the application of the tolling statute was constitutional." 168 N.J. Super. at 526.

conceivable rational basis in present-day circumstances. *McKenney v. Byrne*, 82 N.J. 317-318 (1980).

The flaw in defendants' argument is that it recognizes as rational only a distinction based on the impossibility of obtaining jurisdiction over a foreign corporation. It refuses to acknowledge that among amenable foreign corporations there are degrees of difficulty in effecting service. *A recognition of these degrees of difficulty supplies a present rational basis for distinguishing between represented corporations and those unrepresented but amenable to long-arm service.*

The purpose of the statute is not confined to providing relief when service is impossible. Even where absent residents could be served outside the State, the statute still provides for tolling. See *Fidelity Deposit Co. of Maryland v. Abagnale*, 97 N.J. Super. at 143-144. There is a conceivable rational basis to support tolling.

> [T]he view might have prevailed that the facility of extra-territorial service did not meet the hardship of locating a departed resident in the sprawling country beyond New Jersey's borders. [Id. at 144]

In the 1949 amendment, the Legislature re-expressed its purpose with regard to corporations. It withdrew some of the protection it had afforded plaintiffs suing foreign corporations. Corporations represented in New Jersey, like New Jersey residents present within the State, were made except from the statute's tolling effects. *However, plaintiffs were still not required to search for defendants outside the jurisdiction and succeed within a definite period of time. Thus, the amendment struck a balance between protecting plaintiffs with claims against foreign corporate defendants and imposing excessive exposure to suit upon*

those defendants that were represented within the State. We agree with plaintiffs that the availability of long-arm service has not destroyed the rationality of the classification used in striking this balance.

As the Appellate Division correctly observed, the reasonable basis for the distinction "is demonstrated merely by a reading of our rules pertaining to service of process," 168 N.J. Super. at 527. Rule 4:4-4(c)(1) provides that service may be made

> [u]pon a domestic or foreign corporation, by serving, * * * either an officer, director, trustee, or managing or general agent; or any person authorized by appointment or by law to receive service of process on behalf of the corporation; or the person at the registered office of the corporation in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon the person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then upon any servant of the corporation within this State acting in the discharge of his duties. *If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry and effort personnel service cannot be made upon any of the foregoing* and if the corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office. [R. 4:4-4(c)(1) (emphasis added)]

Under our rules, extra-territorial service is not simply an alternative to service within the State. Plaintiffs may not resort to out-of-state service unless proper efforts to effect

service in New Jersey have failed. The rule imposes a further burden on a plaintiff by requiring him to gather sufficient information to satisfy a court that service is "consistent with due process of law." Since long-arm service is more burdensome than service within the State, a rational distinction exists between corporations that are amenable to service within the State and those that are not. This distinction supports the tolling statute's application to corporations which cannot be served with process within New Jersey. Accordingly, the statute passes constitutional muster.

Due Process

For the first time on appeal defendant Maren also claims that the statute violates the Federal Due Process Clause. The same obstacles which defendants failed to overcome in asserting their equal protection claim block their path here as well.

The constitutional guarantee of substantive due process requires only that the operation of a statute not be unreasonable, arbitrary or capricious, and that the means selected bear a rational relationship to a permissible legislative purpose. *Dome Realty, Inc. v. City of Patterson*, — N.J. at — (Slip op. at 30); *Orange Taxpayers Council, Inc. v. City of Orange*, — N.J.—, — (1980) (slip op. at 12-13); *Weymouth*, 80 N.J. at 44.

In this case defendants' due process claim is "little more than a restatement of the contention that [the statute] contravene[s] principles of equal protection." *Weymouth*, 80 N.J. at 45. In providing for tolling of the statute of limitations under certain circumstances—absence of a resident, nonresidence in the case of an individual and nonrepresentation in the case of a corporation—the statute is

substantially tailored to protect a plaintiff's cause of action when service of process on a defendant is most likely to present difficulties.

Conclusion

For the foregoing reasons the judgment of the Appellate Division is affirmed.

Chief Justice Wilentz and Associates Justices Clifford, Schreiber and Pollock join in this opinion.

Justice Sullivan has filed a separate dissenting opinion in which Justice Handler joins.

SUPREME COURT OF NEW JERSEY

A-72/143 SEPTEMBER TERM 1979

KONSTANTINOS VELMOHOS, also known as VELMOHOS KONSTANTINOS,

Plaintiff-Respondent

v.

MAREN ENGINEERING CORPORATION, an Illinois corporation, and AIR CONVEYING, INC., an Illinois corporation,

Defendants-Appellants,

and

NADUSTCO, Inc., a Louisiana corporation,

Defendant.

SULLIVAN, J., dissenting

I would construe N.J.S.A. 2A:14-22 to toll the statute of limitations as to a foreign corporation against which there is a cause of action in this State only in a situation where such corporation is not amenable to personal jurisdiction.

Defendant corporations were subject to long-arm jurisdiction in this State at all relevant times as found by the trial court. See R.4:4-4(c)(1). Indeed, service was made upon them pursuant to the rule. To hold that despite this, a plaintiff can sit back for any number of years and file suit at his pleasure against such foreign corporations, is to do violence to the concept of limitations of actions. The construction placed upon N.J.S.A. 2A:14-22 by the majority

opinion, while following the literal language of the statute, frustrates the very purpose of the tolling provision and places this Court with a minority of jurisdictions. See Annotation, *"Tolling of statute of limitations during absence from state as affected by fact that party claiming benefit or limitations remained subject to service during absence of nonresidence,"* 55 A.L.R. 3d 1158 (1974). As noted in the annotation, a majority of courts have refused to give application to tolling provisions when the party claiming the benefit of limitations has remained amenable to personal jurisdiction.

A recent comment in 10 *Seton Hall L. Rev.* 585 (1980) entitled "The Tolling Provision of the Statute of Limitations—a Haven for the Dilatory Plaintiff," makes a critical analysis of N.J.S.A. 2A:14-22 and the position now taken in the majority opinion and rejects it on constructional as well as constitutional grounds. The comment concludes by stating that "[a] statute that servies to placate the dilatory plaintiff while denying an important right to a nonresident defendant is an anomaly in a jurisdiction noted for progressive developments in the law corresponding to the changes in the circumstances to which the law applies." *Id.* at 613. Despite the rigidity of some tolling and limitations statutory provisions, this Court has always construed them to effectuate the true statutory purpose. See, *e.g., Galligan v. Westfield Centre Service, Inc.*, 82 N.J. 188 (1980); *White v. Violent Crimes Compensation Board*, 76 N.J. 368 (1978). It has not done so today.

Although I find it unnecessary to reach the issue, the statutory construction of N.J.S.A. 2A:14-22 adopted by the majority also raises substantial questions of due process and equal protection of the laws. I would reverse the Appellate Division and reinstate the judgment of the trial court dismissing the complaint.

Justice Handler joins in this dissent.

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-5075-77

KONSTANTINOS VELMOHOS, also known as VELMOHOS KONSTANTINOS,

Plaintiff-Appellant,

vs.

MAREN ENGINEERING CORPORATION, an Illinois corporation, and AIR CONVEYING, INC., an Illinois corporation,

Defendants-Respondents,

and

NADUSTCO, INC., a Louisiana corporation,

Defendant.

Opinion of the Superior Court of New Jersey, Appellate Division

Argued: May 8, 1979—Decided: May 29, 1979.

Before Judges Lynch, Crane and Horn.

On Appeal from Superior Court, Law Division, Middlesex County.

Mr. Barry A. Weisberg argued the cause for appellant (Mr. Edward J. Dolan, attorney).

Mr. William K. Lewis argued the cause for respondent Maren Engineering Corporation (Messrs. Shanley & Fisher, attorneys).

Mr. Joseph DiRenzo argued the cause for respondent Air Conveying, Inc.

The opinion of the court was delivered by Horn, J.A.D.

This case raises for the first time in our state courts the question of the constitutionality of the tolling provision of our statute of limitations, N.J.S.A. 2A:14-22, as applied to a cause of action against an unrepresented foreign corporation constitutionally amenable to long-arm service of process under R. 4:4-4(c)(1). The trial judge held that the tolling statute was unconstitutional as so applied. Plaintiff appealed.[1]

On June 4, 1976 plaintiff filed a complaint claiming damages for personal injuries sustained by him on August 3, 1973 as the result of a defective machine or equipment supplied by defendant Maren Engineering Corporation (Maren), an Illinois corporation. Subsequently plaintiff filed an amended complaint adding as a defendant Air Conveying, Inc., also an Illinois corporation, which along with Maren was claimed to have supplied the defective machine or equipment which allegedly caused injury to plaintiff.[2]

Claims for personal injuries are usually barred if an action is not brought within two years of the date of the

1. The Attorney General was notified of the constitutional issue's being before this court, pursuant to R. 4:28-4. He has not appeared.

2. Another corporation and another entity were named as defendants in the complaint and amended complaint. We have omitted reference to them because they have since been dismissed as parties, and discussion as to their respective roles in the litigation would be superfluous. Only Maren and Air Conveying, Inc. are included in the designation of "defendant" herein.

accrual of the cause of action. N.J.S.A. 2A:14-2. N.J.S.A. 2A:14-22 provides that said two-year time limitation as well as time limitations fixed by several other statutes shall be tolled as follows:

> ° ° ° [I]f any corporation ° ° ° not organized under the laws of this state, against whom there is such a cause of action, is not represented in this state by any person or officer upon whom summons or other original process may be served, when such cause of action accrues ° ° °, the time or times during which each corporation is not so represented within this state shall not be computed as part of the periods of time within which such an action is required to be commenced ° ° °.

There appears to be no dispute as to the facts that both defendants on this appeal were incorporated in Illinois, that neither was registered to do business in New Jersey and that each was constitutionally amenable to long-arm service in an action in the State by reason of their contacts herein.

Each defendant successfully moved for dismissal of the complaint on the ground that the statute of limitations, N.J.S.A. 2A:14-2, barred the action. These motions probably were provoked by the publication of *Cohn v. G. D. Searle & Co.*, 447 F. Supp. 903 (D.N.J. 1978), in which the judge held that our tolling statute, N.J.S.A. 2A:14-22, violated the Equal Protection Clause of the United States Constitution [3] as applied to foreign corporations which, although "not represented in this state by any person or officer upon whom summons or other original process may be served," [4] could still be served under the long-arm rule.

3. U.S.C.A., Const. Amend. 14.

4. N.J.S.A. 2A:14-22.

The trial judge adopted the reasoning and rule thus declared in *Cohn*, apparently on the thesis that "* * * since *[Cohn]* * * * involved a federal constitutional question decided by a federal court, I fell I am enjoined to follow [the] decision." The judge additionally expressed his view that the position of the court in that case was reasonable.

Quite properly, neither defendant claims that the decision in *Cohn* is controlling. It is well established that state courts and lower federal courts occupy parallel positions, even on federal constitutional questions. *State v. Norflett*, 67 N.J. 268, 286 (1975); *State v. Coleman*, 46 N J. 16, 36 (1965) *cert.* den. 383 U.S. 950 (1966).

The heart of the holding of *Cohn* that the Equal Protection Clause was violated is expressed as follows:

> The effect of the foreign corporation section of the tolling statute is to distinguish between domestic and foreign corporations subject to service through representative agents within the state and foreign corporations subject to service under the long-arm rule. The former are entitled to plead the statute of limitations while the latter are denied its repose. Since this difference in treatment bears no rational relationship to the object of the tolling statute, I find that the statute denied equal protection to foreign corporations amenable to long-arm jurisdiction *Cf. Lemke v. Bailey, supra* 41 N.J. at 305-06, 196 A.2d 523 (Schettino, J., dissenting). [447 F. Supp. at 912]

Whatever may be the standard elsewhere, this court is bound by the rules laid down by our Supreme Court. *Kazin v. Kazin*, 161 N.J. Super. 174, 182-183 (App. Div. 1978); *State v. Moore*, 147 N.J. Super. 490, 497 (App. Div. 1977), certif. den. 74 N.J. 272 (1977). We can perceive

no sound basis for distinguishing the precedent laid down in *Lemke v. Bailey*, 41 N.J. 295 (1963), so as to arrive at the conclusion reached in *Cohn*. To the contrary, although we may recognize that perhaps in the interest of advancing the very purposes of statutes against repose the holding of *Cohn* should be adopted,[4] that is a matter of policy which our Court in *Lemke* must have considered. In any event, if the policy is to be changed, that Court must change it. *Franco v. Davis*, 51 N.J. 237 (1968).

As already noted, Lemke is controlling, notwithstanding the fact there was one dissent, as noted in *Cohn*. In *Lemke* plaintiffs, residents of New Jersey, instituted an action in the Law Division of the Superior Court seeking recovery of damages allegedly arising from an automobile collision which occurred in this State. Service was effected on defendants, residents of Connecticut, by serving the Director of Motor Vehicles, pursuant to N.J.S.A. 39:7-2. Since the accident out of which the claims had arisen had occurred over two years before the action was filed, defendants pleaded the applicable statute, N.J.S.A. 2A:14-2.

As in the instant case, defendants in *Lemke* argued that, since they were continuously amenable to service for two years after the accrual date of the cause of action by service upon the Director of Motor Vehicles, the tolling statute, N.J.S.A. 2A:14-22, was inapplicable, and that a contrary decision would deprive them of the equal protection of the law and hence be unconstitutional. After reviewing the legislative history of the tolling statute, N.J.S.A. 2A:14-22, the Court concluded that the legislative intent as enunciated in *Gotheiner v. Lemhan*, 20 N.J. Misc. 119 (Sup. Ct. 1942), was that "the fact service could be made on non-

4. The reasons for this as stated in *Cohn* are persuasive.

resident defendants under N.J.S.A. 39:7-2 within the statutory time limit, did not make inapplicable ° ° ° N.J.S.A. 2A:14-22 ° ° °." *Lemke, supra*, 41 N.J. at 300.

It further concluded as to the constitutional argument that defendants were not denied the equal protection of the law. In doing so the Court referred to the opinion of the late Chief Justice Weintraub in *New Jersey Restaurant Ass'n v. Holderman*, 24 N.J. 295 (1957), which considered in depth the problem of determining whether unequal protection exists.

Defendants would diminish and distinguish the constitutional holding of *Lemke* by observing that in that case the defendants admitted that the provisions of N.J.S.A. 2A:14-22, creating two classes of defendants under the statute of limitations, *i.e.*, resident and nonresident, were constitutional. This admission is hardly any basis for detracting from the Court's decision that the application of the tolling statute was constitutional. Nor can defendants draw any sound basis for distinction simply because the Court in noting the contradictory results of *Whalen v. Young*, 28 N.J. Super. 543 (Law Div. 1953), rev. on other grds., 15 N.J. 321 (1954), and *Ferraro v. Ferro Trucking Co.*, 72 N.J. Super. 519 (Law Div. 1962), said that it expressed no opinion as to the effect of the tolling statute upon a corporate defendant.[5] In our view the holding of constitutionality established the principle that there was no unequal protection simply because the nonresident, individual or corporate, could have been served with process.

5. See *Lackovic v. New England Paper Tube Co., Inc.*, 127 N.J. Super. 394, 398 (Law Div. 1974), where the judge noted that there was no logical reason to treat corporate and individual defendants in a different manner.

We are not satisfied as to the correctness of the conclusion reached in *Cohn* that "there is no rational justification for differential treatment of such defendants with regard to the statute of limitations." 447 F. Supp. at 912.

More recently, *Hopkins v. Kelsey-Hayes, Inc.*, 463 F. Supp. 539 (D.N.J. 1978), a case involving the same constitutional issue, refused to follow *Cohn*. Judge Brotman, in *Hopkins*, saw the holding in *Cohn* as merely "a substitution of [that] court's judgment on the policies behind the tolling statute for that of the [L]egislature." 463 F. Supp. at 542.

Independently, we assess the constitutionality of the applicability of the tolling statute, N.J.S.A. 2A:14-22, under the Equal Protection Clause and find no infirmity. Certainly defendants have not borne the burden of demonstrating the contrary. *New Jersey Restaurant Ass'n v. Holderman, supra* at 300.

The Equal Protection Clause does not prohibit mere inequality or difference in treatment. *Dandridge v. Williams*, 397 U.S. 471 (1970). And a classification must be upheld under any reasonable set of facts unless there is a showing of invidious discrimination. *Morey v. Doud*, 354 U.S. 457, 463 (1957); *Kenny v. Byrne*, 144 N.J. Super. 243 (App. Div. 1976). If a classification has some "reasonable basis," it does not offend the Constitution simply because it is not made with mathematical nicety or because in practices it results in some inequality. *Lindsley v. Natural Carbonic Gas Company*, 220 U.S. 61 (1910).

There is a reasonable basis for a distinction between the application of the tolling statute as to foreign corporations represented in this State and as to those not so represented. This is demonstrated merely by a reading of our rules pertaining to service of process. R. 4:4-4(c)(1) provides for service:

Upon a domestic or foreign corporation, by serving, * * * either an officer, director, trustee, or managing or general agent; or any person authorized by appointment or by law to receive service of process on behalf of the corporation; or the person at the registered office of the corporation in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon the person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then upon any servant of the corporation within the State acting in the discharge of his duties. If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry and effort personal service cannot be made upon any of the foregoing and if the corporation is a foreign corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office.

Service upon a represented foreign corporation is comparably easy. Service upon an unrepresented foreign corporation may or may not be accomplished with the same facility. It will be noted that before a foreign corporation, otherwise qualified to be served "consistent with due process of law" may be served through the "long-arm" method it must appear by affidavit of someone having "knowledge of the facts that after diligent inquiry and effort personal service cannot be made." Quite obviously, the problem of serving a foreign unrepresented corporate defendant presents problems which ordinarily are not encountered in serving local corporate defendants. And what is not stated expressly in the foregoing rule but is nonetheless a required condition precedent to valid long-arm serv-

ice is that there must be proof that such corporations have such minimal contacts as will not offend traditional notions of fair play and substantial justice. *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945); *Avdel Corporation v. Mecure*, 58 N.J. 264 (1971).

The differences in the methods of serving domestic corporations and unrepresented foreign corporations (where service may be attained) furnish the rational basis for a constitutional distinction in the application of the tolling statute. Service upon an unrepresented foreign corporation may be more difficult. This is demonstrated in the instant case. The seventh separate defense of Maren's answer to plaintiff's complaint asserted that process and service thereof "are insufficient because the Summons and Complaint were not accompanied by an affidavit stating diligent effort and inquiry to effect personal service, as required by R. 4:4-4(c)1)."

Finding as we do in this case that the application of the tolling statute, N.J.S.A. 2A:14-22, did not offend the Equal Protection Clause, the judgment entered in the trial court is

REVERSED.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 79-1881

ROY HOPKINS,

Appellee,

vs.

KELSEY-HAYES, INC.,

Appellant.

Nos. 79-2406 and 79-2605

SUSAN COHN and WALTER COHN, her husband,

Appellants in No. 79-2406,
Cross-Appellee in No. 79-2405,

vs.

G. D. SEARLE & COMPANY,

Appellee in No. 79-2406,
Cross-Appellant in No. 79-2405.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

D.C. Civil Nos. 78-1646 and 74-0450

Argued: February 11, 1980.

Before: ADAMS, GARTH and VAN DUSEN, Circuit Judges.

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Opinion of the United States Court of Appeals for the Third Circuit
(Filed: July 23, 1980)

GARTH, *Circuit Judge.*

These appeals [1] present up with constitutional challenges to a New Jersey statute, N.J.S.A. §2A:14-22, which tolls the statute of limitations in actions against foreign corporations which are not represented in New Jersey, but which may nonetheless be amenable to New Jersey's long-arm jurisdiction. By contrast, foreign corporations which are represented in New Jersey receive the full benefit of all limitations statutes. Thus, the defendants here, both non-represented foreign corporations, claim that N.J.S.A. §2A:14-22, by refusing them the protection of the limitation statute, has denied them due process and equal protection of the laws under the United States constitution.

We do not agree, as we conclude that the New Jersey statute is not irrational. Thus, we will not disturb New Jersey's legislative enactment, which we hold satisfies constitutional standards.

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1. Although these cases were tried separately before two different district court judges, because they involve identical challenges to the constitutionality of a New Jersey statute, N.J.S.A. §2A:14-22, we consolidated them for the purpose of oral argument and disposition.

I.

A.

In the first of these appeals, *Cohn v. D. D. Searle & Co.*, the plaintiffs, who are husband and wife, sued G. D. Searle & Co. (hereinafter "Searle") in tort for damages caused by a birth control pill, Enovid, which had been manufactured by Searle and which allegedly contributed to a stroke suffered by Mrs. Cohn. Searle is a Delaware corporation with its principal place of business in Illinois. Although it was at all times subject to New Jersey's long-arm jurisdiction, *see* N.J. Ct. R. 4:44(c)(1),[2] Searle was not registered to do business in New Jersey, and it maintained no agent for service of process in New Jersey. In fact, the only personnel affiliated with Searle who were located in New Jersey, during the time period relevant to this litigation, were 40 so-called "detail-persons" who worked out of their own homes and whose sole function was to generate good-will for Searle among New Jersey doctors.

Before trial, Searle claimed the benefit of New Jersey's two year statute of limitations as a defense. N.J.S.A. §2A:

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2. Rule 4:4-4(c)(1) permits long-arm service upon out-of-state corporations in the following circumstance:

> If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry and effort personal service cannot be made upon any of the foregoing [methods for service within the state] and if the corporation is a foreign corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office.

14-2.[3] In response, the plaintiff claimed that the statute of limitations was no bar to their complaint because N.J.S.A. §2A:14-22 (hereinafter the "tolling provision") tolls the limitations statute in any action against a foreign corporation which "is not represented in this state by any person or officer upon whom summons or other original process may be served. . . ."[4]

3. N.J.S.A. §2A:14-2 provides:

Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this state shall be commenced within 2 years next after the cause of any such action shall have accrued.

4. N.J.S.A. §2A:14-22 provides in relevant part:

If any person against whom there is any of the causes of action specified . . . is not a resident of this state when such cause of action accrues, or removes from this state after the accrual thereof and before the expiration of the times limited in said sections, *or if any corporation or corporate surety not organized under the laws of this state against whom there is such a cause of action, is not represented in this state by any person or officer upon whom summons or other original process may be served*, when such cause of action accrues or at any time before the expiration of the times so limited, *the time or times during which* such person or surety is not residing within this state or *such corporation or corporate surety is not so represented within this state shall not be computed as part of the periods of time within such an action is required to be commenced by the section.* The person entitled to any such action may commence the same after the accrual of the cause therefor, within the period of time limited therefor by said section, exclusive of such time or times of nonresidence or nonrepresentation. (emphasis added).

Plaintiffs claimed, alternatively, that the statute of limitations was tolled by N.J.S.A. §2A:14-21 which stops the running of the limitations period against persons who are "insane" when their causes of action accrue. In an unpublished opinion, the district court found that on this record, plaintiff's condition did not constitute insanity within the meaning of N.J.S.A. §2A:14-21. Consequently, the district court rejected this alternative argument. In light of our conclusion, *see infra*, that N.J.S.A. §2A:14-22 tolled the running of the limitations statute in this case, we need not, and do not, reach the merits of this contention.

With the issue thus framed, and conceding that no facts were in dispute, Searle then moved for summary judgment, asserting that the Cohns' claim was barred by the statute of limitations. Searle argued that the tolling provision was not applicable in this case because Searle was "represented" in New Jersey by its detail-persons. Alternatively, Searle contended that the tolling provision, if applicable to it, could not pass muster under the equal protection clause of the United States constitution in that it drew an arbitrary and irrational distinction between foreign corporations represented in New Jersey and foreign corporations not so represented, but which were nevertheless subject to New Jersey's long-arm jurisdiction.

The district court rejected Searle's argument that the presence of detail-persons in New Jersey afforded Searle the benefit of the statute of limitations. On the other hand, the district court accepted Searle's contention that the tolling provision was unconstitutional. 447 F. Supp. 903 (D. N.J. 1978). Reasoning that the tolling provision must be interpreted in light of the legislative intent at the *time of its enactment*, the court held that Searle's detail-persons were not adequate corporate "representatives" within the meaning of the tolling provision inasmuch as, as the time that provision was most recently amended, in 1949,[5] juris-

5. As the New Jersey Supreme Court has noted, the roots of the tolling provision are traceable as far back as 1820. *See Lempke v. Bailey*, 41 N.J. 295, 196 A.2d 523 (1963). In its original form, and up until 1949, however, the tolling provision made no specific reference to corporations. *Id.* (citing Pennington, *Laws of New Jersey, 1703-1820* at 670 (1821). As of 1949, the tolling provision, which thus denied both represented and non-represented foreign corporations the benefits of New Jersey's statutes of limitations, read as follows:

> If any person against whom there is or may be a cause of action specified in sections 2:24-1, 2:24-2, 2:24-3, 2:24-5, 2:24-6, 2:4-16 or 2:24-17 of this title is not a resident of this

diction could be obtained over a foreign corporation only by serving, within New Jersey, an "officer, director, trustee or a managing or general agent of the corporation." [6] *In*

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state when such cause of action accrues or removes from this state after the accrual thereof and before the expiration of the times limited in said sections, the time or times during which such person is not residing within this state shall not be computed as a part of the periods of time within which such actions are required to be commenced by said sections; and the person entitled to any such action may commence the same after the accrual of the cause thereof, within the periods of time limited therefor by said sections, exclusive of such time or times of non-residence.

N.J.R.S. §2:24-7.

In 1949, the tolling provision was amended to its present form, referring, for the first time, to corporations "*represented in this state* by any person or officer upon whom summons or other original process may be served." Act of May 18, 1949, 1949 N.J. Laws ch. 125 (amending N.J.R.S. §2:24-7) (1937)) (currently codified at N.J.S.A. §2A:14-22) (emphasis added). The legislative statement accompanying the 1949 amendments to the tolling provision explained this provision as follows:

> Foreign corporations licensed to do business in New Jersey are now deprived by judicial construction of the benefit of the statute of limitations. The purpose of this bill is to correct that situation. New York State found it necessary to make a similar change in its law in view of recent court decisions.

The New York tolling law which is referred to in the legislative statement was N.Y.C.P.A. §19, which had been amended in 1943 so as to include as beneficiaries of the New York statutes of limitations, foreign corporations with "one or more officers or other persons in the state on whom a summons for such corporation may be served." Act of April 3, 1943, 1943 N.Y. Laws, ch. 263.

6. In 1949, the New Jersey rules governing service of process on corporations were as follows:

> *N.J.R.S. §26-43. Domestic corporations in personal action, personal or substituted service summons.*
>
> Service of a summons in a civil action commenced against a domestic corporation in any of the courts of this State may

personam jurisdiction over Searle, therefore, could not have been obtained by service on mere detail-persons. 447 F. Supp. at 909-10.

Having disposed of this statutory issue, the district court then turned to Searle's constitutional claims. The court observed that the purpose of the tolling provision, when it was originally enacted and as it was subsequently amended, *see* note 5 *supra*, was to protect New Jersey plaintiffs asserting causes of action against corporate defendants which were not subject to *in personam* jurisdiction in the New Jersey courts. In light of this purpose, the court concluded that the tolling provision was no longer relevant in cases where the out-of-state defendant was now subject to the long-arm jurisdiction of the New Jersey

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be made by delivering a copy hereof to an officer, director, trustee or a managing or general agent of the corporation personally, or by leaving a copy thereof at his dwelling house or usual place of abode with some competent member of his family of the age of fourteen years or over then residing therein, or by delivering a copy thereof to any person authorized by appointment or by law to receive service of process on behalf of the corporation, or by leaving a copy thereof at the registered office of the corporation with any person in charge thereof.

N.J.R.S. §2:26-44. Foreign corporations.

Service of a summons in a civil action commenced against a foreign corporation may be made in the same manner as is provided in section 2:26-43 of the Revised statutes for service of summons upon a domestic corporation.

New Jersey's rule for long arm service was not promulgated until 1958, N.J. Ct. R.R. 4:4-4(d) (effective September 3, 1958) (presently N.J. Ct. 4:4-4(c)). *See* note 2 *supra*. It was not until 1971, however, that the New Jersey Supreme Court construed the long-arm rule to permit out-of-state service "to the uttermost limits permitted by the United States Constitution." *Avdel Corp. v. Mecure*, 58 N.J. 264, 277 A.2d 207 (1971).

courts—a jurisdictional expansion which, in New Jersey,[7] post-dated the 1949 amendment to the tolling provision. Therefore, the district court held that the continued application of the tolling provision in cases such as this one served no rational purpose and consequently violated the United States constitution. *See* 447 F. Supp. at 910-12.

Both parties appealed from the judgment of the district court. In No. 79-2605, Searle contends that the district court erred by concluding that the presence of its detail-persons in New Jersey did not entitle it to the benefit of the statute of limitations. In No. 79-2406, the Cohns argue, contrary to the district court's holding, that the tolling provision is a rational exercise of the legislature's prerogative and thus is constitutional.

B.

In the second appeal before us, *Hopkins v. Kelsey-Hayes, Inc.*, the plaintiff, Hopkins, was injured on May 18, 1975 when a tire mounted on a rim which had been manufactured by Kelsey-Hayes exploded. This lawsuit was filed on April 27, 1978, nearly three years after plaintiff's cause of action had accrued. Kelsey-Hayes is a Delaware corporation, which has never been represented in New Jersey. However, at all times it has been subject to New Jersey's long-arm jurisdiction.

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7. The United States Supreme Court sanctioned broad long-arm rules in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), when it held that states could exercise *in personam* jurisdiction over out-of-state defendants with only "certain minimum contacts" with the forum state. Expansive long-arm jurisdiction in New Jersey was not recognized until much later, however. *See* note 6 *supra*.

Before a different district court judge than the judge who presided in *Cohn v. G. D. Searle, Inc.*, Kelsey-Hayes claimed the benefit of New Jersey's two year statute of limitations and moved for summary judgment. Plaintiff responded that the running of the limitations statute was tolled by N.J.S.A. §2A:14-22, *see* note 4 *supra*, and that therefore its complaint was not barred. Alternatively, the plaintiff argued that the statute was tolled under New Jersey's "discovery rule," *see Lopez v. Swyer*, 62 N.J. 267, 300 A.2d 563 (1973), *Fernandi v. Strully*, 35 N.J. 434, 173 A.2d 277 (1961), under which the statute does not begin to run until the plaintiff has had a reasonable opportunity to "discover" the identity of the person who caused his injury. At the pre-trial stage, Kelsey-Hayes responded only to the plaintiff's first argument. It claimed that the tolling provision when applied to defendants subject to New Jersey's long-arm jurisdiction, violated the due process and equal protection clauses of the United States constitution.

In ruling on Kelsey-Hayes' summary judgment motion, the district court similarly confined its analysis to the constitutionality of the tolling provision. The district court judge in *Hopkins* expressly disagreed with the constitutional holding reached by the district court judge in *Cohn v. G. D. Searle, Inc., supra*. The *Hopkins* court concluded that since under New Jersey law, obtaining jurisdiction over non-represented foreign corporations process under the long-arm rule was more difficult than obtaining jurisdiction over foreign corporations which were represented in New Jersey, a rational basis existed for distinguishing between these two categories of defendants. Having found that this "rational basis" supported the tolling provision, the district court rejected both defendant's due process and equal protection arguments. *Hopkins v. Kelsey-Hayes, Inc.*, 463 F. Supp. 539, 542 (D.N.J. 1978).

C.

Pursuant to 28 U.S.C. §1292(b), the district court and this court certified Kelsey-Hayes, interlocutory appeal from the order denying summary judgment.

Shortly before we heard arguments in these cases, counsel called our attention to *Velmohos v. Maren Engineering Corp.*, No. A-72/143 (N.J. Sup. Ct. June 18, 1980), a case which was at that time pending before the New Jersey Supreme Court. *Velmohos* involves the identical issues raised in these appeals.

In *Velmohos*, as in these cases, New Jersey plaintiffs had sued non-represented foreign corporations in tort, and had relied upon the tolling provision in response to a statute of limitations defense. The state defendants in *Velmohos* raised two arguments against application of the tolling provision. First, they claimed that their amenability to New resentation" within the state to entitle them to a limitations Jersey's long-arm jurisdiction constituted sufficient "repdefense—in that case, two years. Secondly, they argued that, as applied to them, the tolling provision violated the federal constitution. In an unreported opinion, the state trial court in *Velmohos* struck down the tolling provision on federal constitutional grounds, adopting the reasoning of the district court in *Cohn v. G. D. Searle & Co., supra.* This decision was reversed by the Appellate Division of the Superior Court, which held that the tolling provision was rational and was thus constitutional. 168 N.J. Super. 520 (App. Div. 1979).

Notwithstanding the pendency of the *Velmohos* appeal before the New Jersey Supreme Court, we heard arguments on the merits in the appeals before us. Nevertheless, recognizing that certain holdings of the New Jersey Supreme Court would have binding effect upon us,[8] and at the sug-

8. Any construction of the New Jersey tolling provision by the state's highest court would, of course, be binding upon us. Similarly, we would be bound if the New Jersey Supreme Court *struck*

gestion of all the parties, we agreed to withhold decision in these cases pending the decision in *Velmohos*.

On June 18, 1980 the New Jersey Supreme Court filed its opinion in *Velmohos*, affirming the Appellate Division, *Velmohos v. Maren Engineering Corp.*, No. A172/143 (N.J. Sup. Ct. June 18, 1980). The court, in construing the New Jersey statute which provides for tolling, held that a foreign corporation's mere amenability to New Jersey's long-arm jurisdiction did not constitute sufficient "representation" of that corporation in New Jersey to prevent the tolling of the statute of limitations. *Id.*, slip op. at 17. In so holding, the New Jersey Supreme Court reasoned that the language [of the tolling provision] must be interpreted from the intent of the Legislature at the time of enactment." *Id.*, slip op. at 15. At the time the tolling provision was enacted, the concept of "representation" within New Jersey, as that term is used in the tolling provision, could not have included amenability to long-arm jurisdiction, because long-arm jurisdiction did not then exist. *See* notes 6 and 7 *supra*. Thus, the court reasoned that incorporating the judicial expansion of long-arm jurisdiction into its interpretation of the tolling provision would be accepting the argument that "a Ruling of Court can act as an implied, partial repeal of a legislative enactment." This the Supreme Court of New Jersey refused to do, *Velmohos, supra*, slip op. at 16.

Having thus disposed of the defendants' statutory arguments," the *Velmohos* court then proceeded to consider

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down the provision on *state* constitutional grounds. However, any decision of the New Jersey Supreme Court on *federal* constitutional grounds is not binding upon us.

9. Two justices dissented from the majority opinion in *Velmohos*. They would have construed the tolling provision as inapplicable to corporations which are amenable to long-arm jurisdiction. Consequently, they did not reach the constitutional questions. *See Velmohos v. Marne Engineering Corp., supra* (Sullivan, J., dissenting, joined by Handler. J.)

and, after consideration, to reject the constitutional challenges to the tolling provision. The court concluded that the existence of long-arm jurisdiction did not destroy the rationality of the tolling provision, observing that extraterritorial service is far more difficult to achieve than service within the state. *Id.*, slip op. at 23.[10]

Since *Velmohos* has been decided and we have received comments from the parties, we now turn to the issues presented to this court. We conclude that the defendants in both cases are subject to the New Jersey tolling provision and that the tolling provision does not violate the fourteenth amendment of the United States constitution.

II.

A.

The first step in our analysis of the merits of these appeals has been facilitated, to a great extent, by the opinion of the New Jersey Supreme Court in *Velmohos*. For after *Velmohos*, a corporation whose only "presence" in New Jersey is that it is amenable to the state's long-arm jurisdiction, clearly cannot argue that under the tolling statute it is "represented" in New Jersey so as to obtain the benefit of New Jersey's limitations statute.[11] In *Kelsey-*

10. The New Jersey Supreme Court observed that, had the statute been attacked under the New Jersey state constitution, its analysis and result would have been no different. *Velmohos, supra*, slip op. at 18-19 n.12.

11. Many other state courts have construed their tolling provisions differently, so that out-of-state defendants amenable to long-arm jurisdiction would be exempt from the tolling rule. *See generally* Annot., *Tolling of Statute of Limitations During Absence from State as Affected by Fact that Party Claiming Benefit of Limitations Remained Subject to Service During Absence or Nonresi-*

Hayes, this holding settles the statutory issue, enabling us to proceed directly to the constitutional question, because *Kelsey-Hayes*, the corporate defendant in that case, had no other "presence" in New Jersey apart from its amenability to long-arm jurisdiction.

In *Searle*, however, the statutory issue has not been completely resolved by *Velhomos* in light of the presence of Searle's detail-persons in New Jersey. The district court in *Searle* ruled that the existence of these detail-persons did not preclude the operation of the tolling statute, and Searle's appeal from that ruling is the subject of No. 79-2605. Although it has not expressly decided the issue before us, we are convinced from the *Velmohos* opinion, that the New Jersey Supreme Court would similarly conclude that Searle's detail-persons are not the "representatives" contemplated within the tolling provision.

As previously indicated, in *Velmohos*, the New Jersey Supreme Court emphasized that the language of the tolling provision "must be interpreted from the intent of the Legislature in light of the circumstances at the time of enactment." *Velmohos, supra*, slip op. at 15. At the time the tolling provision was amended to refer to corporations which were "represented" in New Jersey, *see* note 5 *supra*, personal service upon minor functionaries such as Searle's detail-persons would not have sufficed to obtain jurisdiction over foreign corporations. *In personam* jurisdiction over foreign corporations could only have been obtained by service upon officers or duly appointed agents of the company. *See* N.J.S.A. §2:26-44 (repealed) (quoted in note 6 *supra*); *Porcelli v. Great Atlantic & Pacific Tea Co.*, 128 N.J.L. 603,

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dence, 55 A.L.R.3d 1158. As the *Velmohos* majority points out, however, those cases involved different statutory language than the New Jersey tolling provision. *See Velmohos, supra* slip op. 14 & 14n.8.

27 A.2d 641 (Sup. Ct. 1941); *cf*, N.J. Ct. R.4:44(c)(1); *Wright v. News Syndicate Co.*, 35 N.J. Super. 133, 113 A.2d 215 (1955) (service on "any servant of the corporation" within New Jersey appropriate under current rules). Thus, the New Jersey legislature could not have intended that individuals such as Searle's detail-persons could obtain the benefits of the limitations statutes for their companies, particularly since the detail-persons had only a minimal affiliation with Searle and could not, at the time tolling provision was enacted, have subjected Searle to *in personam* jurisdiction in New Jersey.

Moreover, it is significant, as the New Jersey Supreme Court noted, *see Velmohos, supra*, slip op. at 15, that the tolling provision speaks of individuals who "represent," rather than just "act" for, the foreign corporation in New Jersey. By contrast, the applicable court rules of service speak only of "servants" who merely "act" in New Jersey. *See* N.J. Ct. R. 4:4-4(c)(1). It appears to us, therefore, that the statutory tolling provision contemplates a much more significant corporate figure or presence—one capable of "representing" the corporation—than does the service rule. This higher standard which requires "representation" in New Jersey before a foreign corporation can receive the benefits of the limitations statutes, comports with the original purpose of the tolling rule: to permit plaintiffs who have causes of action against foreign corporate defendants which are not represented in New Jersey, to maintain the viability of their actions despite the passage of time. Moreover, this purpose is consistent and compatable with New Jersey's policy of liberally construing limitations statutes so as to preserve, whenever possible, a plaintiff's opportunity to litigate his claim on the merits. *See Velmohos, supra, Galligan v. Westfield Centre Service, Inc.*, 82 N.J. 188, 412 A.2d 122 (1980).

Therefore, in light of its own statutory analysis, we are satisfied that the New Jersey Supreme Court, if faced with this question, would hold that Searle's detail-persons do not constitute "representation" of Searle in New Jersey, sufficient to provide New Jersey's limitations protections to Searle. To the contrary, we are convinced that the New Jersey Supreme Court would hold, and consequently we hold, that Searle's detail-persons do not exempt it from the tolling provision. Accordingly, unless the tolling provision is unconstitutional, and we conclude that it is not, the limitations statute will not bar the plaintiffs' claims against the defendant in both cases before us.

B.

Thus, there remains for consideration only the constitutional challenges made here to the tolling provision. The defendants concede that the tolling provision does not implicate any fundamental interest or suspect classification.[12] In these circumstances, we ordinarily afford great leeway to legislative judgments. As we recently stated:

12. Indeed, this concession would seem to be compelled by *Campbell v. Holt*, 115 U.S. 620 (1885) where the Supreme Court held that repeal of a statute of limitations as to debts which had already been barred did not implicate the fourteenth amendment rights of the debtor. In reaffirming *Campbell*, some 60 years later, the Court, speaking through Justice Jackson, stated:

> Statutes of limitation find their justification in necessity and convenience rather than in logic. They represent expedients, rather than principles. They are practical and pragmatic devices to spare the courts from litigation of stale claims, and the citizen from being put to his defense after memories have faded, witnesses have died or disappeared, and evidence has been lost. Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342, 349. They are by definition arbitrary, and their operation does not discriminate between the just and the unjust claim, or the voidable and

In reviewing a state statute or constitutional provision under the due process or equal protection clause, a court must determine if the provision rationally furthers *any* legitimate state objective. "For these purposes, it is, of course, constitutionally irrelevant whether this reasoning in fact underlay the legislative decision. . . ." *Flemming v. Nestor*, 363 U.S. 603, 612 (1960). The court may even hypothesize the motivations of the state legislature to find a legitimate objective promoted by the provision under attack. *See Weinberger v. Salfi*, 422 U.S. 749, 780 (1975); *Williamson v. Lee Optical Inc.*, 348 U.S. 483, 487-90 (1955); *Trafelet v. Thompson*, 594 F.2d 623, 626 (7th Cir.), *cert. denied*, — U.S. —, 48 U.S.L.W. 3239 (Oct. 1, 1979).

Malmed v. Thornburgh, No. 79-2467, slip op. at 7, (3d Cir. May 13, 1980) (Aldisert, J.) emphasis in original). Thus, the defendants challenging the constitutionality of the tolling provision have the difficult burden of demonstrating that the provision cannot "rationally further [ ] *any* legitimate state objective." *Id.*

In seeking to meet this burden, the defendants argue that the tolling provision violates the constitution because

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unavoidable delay. They have come into the law not through the judicial process but through legislation.[13] They represent a public policy about the privilege to litigate. Their shelter has never been regarded as what now is called a "fundamental" right or what used to be called a "natural" right of the individual. He may of course, have the protection of the policy while it exists, but the history of pleas of limitation shows them to be good only by legislative grace and to be subject to a relatively large decree of legislative control.

Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945) (footnote omitted). Thus, it is clear that the defendants have no "right" to protection of the statute of limitations. Their only claim can be that the state legislature acted irrationally, under the circumstances, by denying them the benefit of the limitations statute.

it is overprotective.[13] They argue that the purpose of the tolling provision was to protect New Jersey plaintiffs who could not obtain *in personam* jurisdiction over out-of-state defendants.[14] The defendants contend that the tolling provision is no longer relevant or needed to promote this interest in cases where an out-of-state corporate defendant is amenable to New Jersey's long-arm jurisdiction. In such cases, they contend the plaintiffs may assert their causes of action and serve their complaints upon non-represented foreign corporate defendants in the same fashion as they serve domestic corporations or foreign corporations "represented' in New Jersey. Thus, they claim that the extra

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13. When no fundamental interests or suspect classifications are involved, both "underinclusive" and "overinclusive" statutes are subjected to the same "minimum rationality" test. Nevertheless, it has been argued that "overinclusive" or overprotective statutes present even less need for judicial action than statutes which are "underinclusive" in their regulatory sweep.

> "Overinclusiveness," a second variant of legislative approximation for which a classification may be overturned,[16] poses less danger than underinclusiveness, at least from the viewpoint of political accountability, for overinclusiveness does not exempt potentially powerful opponents from a law's reach.

L. Tribe, American Constitutional Law, 999 (1978). (Footnote omitted).

14. In a technical sense, this appears to be an over-simplification. In 1949, the tolling provision was amended to exempt foreign corporations "represented in this state by any person or officer upon whom summons . . . may be served. . . ." Four years earlier, however, the Supreme Court had greatly expanded the states' jurisdictional powers over out-of-state defendants, permitting the state courts to exercise *in personam* jurisdiction over out-of-state defendants with "certain minimum contacts" with the forum state. *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Thus, at the time the tolling provision was last amended, New Jersey plaintiffs could have constitutionally obtained service on foreign corporations who did not have "representatives" in the state. The New Jersey courts did not recognize the full expanse of long-arm jurisdiction until much later, however. *See Avdel Corp. v. Mecure*, 58 N.J. 264, 277 A.2d 207 (1971); notes 6 and 7 *supra*.

protection provided New Jersey plaintiffs by the tolling provision, is unnecessary and arbitrary in light of the original purpose of the tolling provision. Being arbitrary, they contend the statute is therefore unconstitutional.

The defendant's argument overlooks the fact that the tolling provision must be upheld if it "rationally furthers *any* legitimate state objective," without regard to whether the legislature specifically focused on that objective. *Malmed v. Thornburgh, supra.* In this case, at least one such legitimate objective is readily apparent: the tolling provision eases the burdens upon New Jersey plaintiffs prosecuting lawsuits against out-of-state defendant corporations which are not represented in New Jersey and which, in a great many instances, are difficult to locate and to serve, despite the availability of the long-arm rule. The New Jersey Court Rules, by their very terms, make clear that long-arm service may be utilized only as a last resort. They provide that service may be made

> [u]pon a domestic or foreign corporation, by serving . . . either an officer, director, trustee, or managing or general agent; or any person authorized by appointment or by law to receive service of process on behalf of the corporation; or the person at the registered office of the corporation in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon the person at the place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then upon any servant of the corporation within this State acting in the discharge of his duties. *If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry and effort personal service cannot be made upon any of the foregoing* and if the corporation is

> a foreign corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office.

N.J. Ct.R. 4:4-4(c)(1) (emphasis added).

Moreover, Justice Pashman in writing for the New Jersey Supreme Court in *Velmohos* emphasized the special burdens which inhere in achieving long-arm service:

> Under our rules, extra-territorial service is not simply an alternative to service within the State. Plaintiffs may not resort to out-of-state service unless proper efforts to effect service in New Jersey have failed. The rule imposes a further burden on a plaintiff by requiring him to gather sufficient information to satisfy a court that service is "consistent with due process of law."

Velmohos, supra, slip op. at 23.

Since long-arm service is more difficult to achieve than service within the state, it is not irrational for New Jersey to distinguish between two classes of foreign corporations. Those foreign corporations which are represented in New Jersey, and are thus more readily available to plaintiffs, are afforded limitations protections. On the other hand, the limitations statutes are tolled against foreign corporations which are not represented in New Jersey and thus are not as available to New Jersey plaintiffs. This distinction between represented and non-represented foreign corporations reflects the pragmatic difficulties which may be encountered by plaintiffs suing foreign corporations. Since service of process under the long-arm statute is more diffi-

cult and time-consuming to achieve than service within the state, and since out-of-state, non-represented corporate defendants may be difficult to locate let alone serve, tolling the statute of limitations protects New Jersey plaintiffs and facilitates their lawsuits against such defendants. Because the tolling provision fulfills the legitimate state purpose of easing the special burdens of suits against non-represented foreign corporations, we cannot say that the distinction which it recognizes is irrational.[15]

In arguing against the constitutionality of the tolling provision, the defendants attempt to distinguish between the service of a complaint and the filing of a complaint. They point out that, under New Jersey practice, a plaintiff can file a "John Doe" complaint, and thereby stop the running of the statute of limitations without having served the defendant with process. *See* N.J. Ct.R. 4:4-1 (summons must be served within 10 days of filing a complaint or action may be dismissed on defendant's motion). This procedure, they argue, enables a plaintiff to preserve his complaint against a statute of limitations defense, notwithstanding any later difficulties encountered in serving pro-

15. Although many courts have construed state tolling statutes so as to exempt individuals who are subject to service of process in the state, *see* note 10 *supra*, no court, other than the district court in *Cohn v. Searle*, *supra*, has concluded that such a result was mandated by the constitution. In fact, in *Vaughn v. Deitz*, 430 S.W.2d 487 (Sup. Ct. Tex. 1968), the Texas Supreme Court specifically upheld the Texas tolling statute against a constitutional argument identical to that raised here.

Moreover, in *Bauserman v. Blunt*, 147 U.S. 647 (1893), the Supreme Court gave effect to a Kansas statute which tolled the statute of limitations in an action against an out-of-state defendant who was nevertheless subject to service in the state. Although *Bauserman* did not discuss the constitutional issue, the court implicitly recognized the constitutionality of this type of tolling provision.

cess. Because of this procedure, the defendants contend that the protection of this procedure, the defendants contend that the protection afforded by the tolling provision superfluous and that the tolling provision is thus arbitrary, irrational and, consequently, unconstitutional.

We are not persuaded by the defendants' argument. In the first instance, the protection afforded plaintiff by the "John Doe" procedure is imperfect, at best. Complaints filed in this manner are subject to dismissal after six months on the court's own motion, unless the plaintiff, by proving his diligence, can convince the court to retain the case on the docket. N.J.Ct.R. 1:13-7. We do not believe that, given their crowded calendars, the state courts would permit a "John Doe" complaint to remain on the docket for a lengthy or indefinite period of time. Thus, the "John Doe" procedure does not, in fact, afford New Jersey plaintiffs the same protection as the tolling provision. Furthermore, the defendants' argument suffers from a more basic flaw. Even if the tolling provision could be considered superfluous in light of the "John Doe" procedure, this would not necessarily lead to our holding that the tolling provision is arbitrary or irrational. Nothing in law or logic prevents the New Jersey legislature from providing New Jersey plaintiffs with a mechanism for relief from the burdens of suits against non-represented foreign corporations which is additional to any mechanism found in the Court Rules.

Accordingly, since we find that N.J.S.A. §2A:14-22 has a rational foundation, and recognizing that rationality is the test for both due process and equal protection challenges in this context, *see Malmed v. Thornburgh, supra,* we reject the defendants' constitutional attacks on the statute.

III.

We therefore hold that the foreign corporate defendants in these cases, not being represented in New Jersey, are subject under New Jersey law to New Jersey's tolling provision, which we hold to be constitutional. Thus, in these cases, defendants may not claim the protection of the statute of limitations. In light of our conclusion, the interlocutory order of the district court which denied summary judgment in *Hopkins v. Kelsey-Hayes*, at No. 79-1881, will be affirmed, and the order of the district court in *Cohn v. G. D. Searle*, at Nos. 79-2406 and 79-2605, entering judgment for the defendant will be reversed. Each case will be remanded to the particular district court for further proceedings. Costs in each case will be taxed against the respective defendant.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit

APPENDIX D

Affidavit of David R. Brown, President of Maren Engineering Corp.

STATE OF ILLINOIS)
COUNTY OF COOK) ss:

I, David R. Brown, President of Maren Engineering Corporation [hereinafter "Maren"] make this Affidavit in support of Maren's Motion to dismiss the Complaint in the above captioned matter as barred by the Statute of Limitations.

1. Maren is incorporated under the laws of the State of Illinois.

2. While Maren does not maintain offices for the sale of its products within the State of New Jersey, it has in the past been represented there by independent sales representatives who operate their businesses within the State of New Jersey, and obtain orders in return for a commission.

3. Other sales of equipment are made on the basis of orders which are received in Illinois, but which call for the delivery of equipment in New Jersey. During the years 1969 through 1975, Maren did in excess of $500,000 worth of business with New Jersey customers. Figures for the years 1974 and 1975 were $88,000 and $137,000, respectively.

4. Attached as Schedule "A" of this Affidavit are a series of sheets which reflect the dates of equipment shipments into the State of New Jersey, the identity of the customer

and the amount of the invoice during the years 1969 through and including 1975.

5. The equipment alleged to be involved in the above captioned action called for the manufacture of equipment and its shipment to the premises of Container Corporation of America in New Brunswick, New Jersey, where it was to be installed by Nadustco, Inc.

/s/ David R. Brown
DAVID R. BROWN

Sworn and subscribed to before me this 22 day of May 1978.

/s/ Marlene V. Humbertson
MARLENE V. HUMBERTSON

Date Shipped	Model	Customer	Amount of Invoice
2/ 6/69	42 Portable	Metal Edge Industries, Barrington, NJ	$ 1,556.00
6/16/69	42 Portable	John Dusenbery Co., Clifton, NJ	1,628.00
10/29/69	423 Manual	Columbia Records, Hawthorne, NJ	2,333.25
11/17/69	203-101 Baler	Western Kraft East, Inc., Bellmawr, NJ	
	60" Shredder	Western Kraft East, Inc., Bellmawr, NJ	24,225.00
11/25/69	42 Portable	M. C. Ricciardi Co., Washington, NJ	2,035.00
11/ 3/69	42-S Portable	E. I. du Pont de Nemours & Co., Newark, NJ	2,975.00
12/22/69	42-S Portable	Edson Tool & Mfg. Co., Inc., Belleville, NJ	2,975.00
12/15/69	203 Baler	Moon Corrugated Container, Roselle, NJ	11,020.25
2/23/70	42 Portable	Hordis Bros, Inc., Pensauken, NJ	1,628.00
9/14/70	42 Portable	Hordis Bros, Inc., Pensauken, NJ	1,628.00
1/23/70	203 Baler W/Bale Separator	Container Corp. of America, New Brunswick, NJ	12,631.00
2/ 6/70	60" Shredder	Container Corp. of America, New Brunswick, NJ	8,977.50
2/11/70	54 Automatic	Uniroyal, Inc., Passaic, NJ	6,556.00
3/ 9/70	48-S Manual Baler	M. C. Ricciardi Co., Alpha, NJ	6,665.00
3/27/70	1030 Vertical Baler	M & Q Plastic Products Co., Freehold, NJ	1,995.00
6/16/70	423 Manual	Morristown Daily Record, Morristown, NJ	2,196.00
6/25/70	72 Automatic	Huffman & Koos, Div. of City Prods, Linden, NJ	6,477.52
6/25/70	72 Automatic	Huffman & Koos, Div. of City Prods, Linden, NJ	6,477.52

7/30/70	72-S Manual	Metro Glass, Carteret, NJ	7,523.00
4/ 5/71	203 W/Auto Tie	Owens-Illinois, Moonachie, NJ	24,300.00
5/10/71	1030 Vertical	Lakeview School, Denville, NJ	1,935.00
2/ 3/71	30 Automatic	Magna Print Corporation, Little Falls, NJ	2,647.00
1/21/71	111 Automatic	Blum Binder, Inc., Hillside, NJ	7,620.25
3/ 8/71	42-S Portable	United Vintner's, Inc., Newark, NJ	2,975.00
6/ 4/71	14 Automatic	Continental Can Co., Inc., Teterboro, NJ	4,905.75
6/30/71	42-S Manual	Conwed Corporation, Delanaco, NJ	3,016.00
12/29/71	2036 Automatic	Del-Val Market, Milford, NJ	3,044.00
12/ 3/71	42 Portable	Hoboken Paints, Inc., Lodi, NJ	2,035.00
6/14/71	202-101 W/Auto Tie	Union Camp Corp., Trenton, NJ	22,247.25
6/14/71	60" Shredder	Union Camp Corp., Trenton, NJ	2,808.90
/30/72	42-S Portable	Lever Brothers Co., Edgewater, NJ	3,416.00
/24/72	60-S Automatic	Colgate Palmolive Co., Jersey City, NJ	8,578.25
/28/72	423 Automatic	Stranahan Foil Co., Inc. South Hackensack, NJ	4,675.00
10/11/72	2036 Baler	West Norton Farms Stores, Clinton, NJ	2,145.00
/20/72	2048 Manual	Mannington Mills, Inc., Salem, NJ	2,540.00
15/20/72	203-101 W/Auto Tie	Owens-Illinois, Inc., Bridgeton, NJ	24,558.90

/16/73	30 Portable	Markay Bags, Inc., Plainfield, NJ	1,995.00
/29/73	60-S Manual	American-Standard, Trenton, NJ	7,475.00
/26/73	423 Automatic	Pyro-Kem, Chemical Concentrates, Boonton, NJ	4,477.00
/20/73	60-S Automatic	Pathmark of Teaneck, Teaneck, NJ	7,596.00
/20/73	2060 Automatic	Galler Seven-Up Bottling Co., Hackensack, NJ	4,900.00
/22/73	72 Automatic	Gray Envelope Company, Woodbridge, NJ	7,196.00
/15/73	2048 Automatic	Burry Biscuit, Elizabeth, NJ	3,720.00
/22/73	203 W/Auto Tie	International Paper Co., Whippany, NY	21,730.00
/11/73	72 Manual	G&R Packaging Company, Bellmawr, NJ	6,020.00
/21/73	423 Automatic	Sheridan Printing Co., Alpha, NJ	4,882.50
/11/73	42 Portable	Nu-Method Dyeing & Processing, Union City, NJ	1,992.00
/15/73	2048 Manual	Tapco Ltd., Pemberton, NJ	2,422.50
/ 6/73	122 Automatic	Johnson & Johnson, North Brunswick, DNJ	9,400.00
	60" Shredder Pgybk	Johnson & Johnson, North Brunswick, DNJ	16,467.75
4/10/74	2060 Automatic	M & M Mars, Inc., Hacketstown, NJ	4,794.00
5/16/74	2048 Manual	American Bilt Rite, Trenton, NJ	2,422.50
7/30/74	60-S Semi Auto	Mideast Aluminum Corp., Dayton, NJ	7,380.00
8/20/74	122 Automatic	Keystone Folding Box Co., Newark, NJ	9,220.00
6/27/74	2060 Automatic	Addressograph Multigraph Corp., Teterboro, NJ	5,390.00
8/ 2/74	2060 Manual	Gimbels Media Store, Moorestown, NJ	3,676.25
8/ 2/74	72-S Semi-Auto	Scott Paper Co., Landisville, NJ	7,548.00

8/12/74	72-S Semi-Auto	Campbell Soup Co., Camden, NJ	7,868.00
6/20/74	2060 Auto	Two Guys/Voronado, Bricktown, NJ	4,625.00
6/20/74	2060 Auto	Two Guys/Voronado, New Jersey	4,625.00
6/20/74	2060 Auto	Two Guys/Voronado, New Jersey	4,625.00
6/20/74	2060 Auto	Two Guys/Voronado, New Jersey	4,625.00
10/30/74	72-S Semi-Auto	Tyco Industries, Moorestown, NJ	9,325.00
10/29/74	2060 Automatic	Lightolier, Jersey City, NJ	4,446.75
11/13/74	2060 Automatic	Progresso Foods Corp., Vinceland, NJ	4,581.50
11/ 4/74	423-S Auto	First National Stores, Kearny, NJ	5,644.00
12/18/74	42 Automatic	Challenge Printing Co., Wallington, DNJ	4,207.50
4/ 4/75	60-S Automatic	Colgate Palmolive Co., Kearney, NJ	12,095.00
7/29/75	2048 Manual	Mannington Mills Inc., Salem, NJ	3,102.50
2/27/75	72 Automatic	Brockway Glass Co., Inc., Freehold, NJ	7,860.00
6/ 2/75	60" Shredder	Brockway Glass Co., Inc., Freehold, NJ	13,535.00
3/ 3/75	2048 Automatic	Stein Hall & Co., Inc., Clifton, NJ	3,561.50
5/19/75	122 Automatic	Clepac Division, Vineland, NJ	10,922.50
8/22/75	203-102 W/Auto Tie	President Container, Inc., Moonachie, NJ	27,138.25
9/ 9/75	203-102/60A" Shred Piggbk W/Auto Tie	Garden State Container, Bayonne, NJ	39,935.85
		Anchor Hocking Corp., Salem, NJ	19,500.00
3/31/75	203 Baler		